

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Motion to Remand

Plaintiffs filed a class action in state court. Plaintiffs served Defendant with their complaint after Congress enacted the Class Action Fairness Act (CAFA). Defendant then removed the action to this Court on the basis of federal jurisdiction under CAFA.

Plaintiffs filed a Motion to Remand on the basis that they "commenced" their action in state court when they filed their complaint, which was four days before Congress enacted CAFA, and, therefore, CAFA was not controlling. Defendant opposed remand on the basis that Plaintiffs did not "commence" their action until they filed and served the complaint on Defendant.

Judge Brown concluded Or. R. Civ. P. 3 governs when a party commences an action in Oregon. Because Or. R. Civ. P. 3 provides an action is commenced when the complaint is filed rather than after the defendant is served, Judge Brown concluded Plaintiffs commenced their action in state

court before Congress enacted CAFA, and, therefore, this Court lacks jurisdiction. Accordingly, Judge Brown granted the Motion to Remand.

Lussier v. Dollar Tree Stores, Inc., CV 05-768-BR
(Opinion, September 7, 2005)
Plaintiffs' Counsel: David Schuck
Defense Counsel: Carol Bernick

Civil Rights

Plaintiff Matthew Kleinman alleged violations of his Fourth, Sixth, and Fourteenth Amendment rights arising from a 1997 criminal trial and conviction in Multnomah County Circuit Court. He filed a complaint against the district attorney for Multnomah County, the City of Portland, and individual officers of the Portland Police Bureau. Judge King granted the defendants' motions for summary judgment, finding that viewing the evidence in the light most favorable to plaintiff, the facts did not support plaintiff's claim that the individual police

officers failed to disclose exculpatory evidence or destroyed the evidence in violation of plaintiff's due process rights, or engaged in malicious prosecution. Judge King also found that neither the district attorney nor the City of Portland could be found liable for inadequately training their employees.

Kleinman v. Mult. Co. et al.,
CV 03-1723-KI
(Opinion, July 28, 2005)
Plaintiff's Counsel: Laird Palmer
Defense Counsel: Agnes Sowle

ERISA/ Family Law/ Insurance

In a case of first impression, Judge Panner held that a life insurance designation made in a "qualified domestic relations order" (QDRO) prevails over a contrary beneficiary designation made by the insured, notwithstanding the latter beneficiary's contention that it was a bona fide purchaser for value without notice.

A divorce decree required

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Husband to maintain a \$250,000 life insurance policy for his children and ex-wife, and authorized a constructive trust upon the proceeds if Husband altered the beneficiary. Wife's attorney neglected to inform the insurer about this restriction. Husband secretly sold the policy to a viatical settlement company, which obtained the insurer's consent to assign the policy but otherwise made no inquiry. When Husband died, both the viatical company and the ex-wife/children claimed the proceeds. The insurer tendered the funds to the court.

The policy, obtained through Husband's employment, was part of an employee welfare benefit plan. ERISA ordinarily would require the Plan Administrator to honor the beneficiary designation and the assignment to the viatical company.

Judge Panter first determined that the decree at issue was a QDRO, despite some minor omissions, and is an enforceable "law." Judge Panter then reasoned that Congress did not carefully preserve the QDRO, and its beneficiary designation, merely to set up a conflict between the QDRO and the beneficiary designation in the plan documents.

Judge Panter also noted that any fraud upon the viatical company was perpetrated by Husband; the ex-wife/children were not involved.

Hartford Life & Accident Ins. Co. v. Premium Escrow Services, CV 04-1768-PA (Opinion, August 3, 2005)
Plaintiff's Counsel: Katherine Sumervell
Defense Counsel: Francis P. Dicello

ERISA

A union ERISA trust fund lost millions of dollars when its money manager, Capital Consultants, was placed into receivership and some of the principals were criminally prosecuted. The trust had also retained Solomon Smith Barney as an investment consultant which provided quarterly reports that quantified the fund's asset allocation and compared the fund's performance to performance targets and industry benchmarks. After the loss, the fund alleged claims for breach of contract, numerous common law torts, and breach of ERISA fiduciary duties against Solomon Smith Barney. Judge King granted summary judgment in defendant's favor and dismissed all claims. He found that the contractual duties were not as broad as the fund contended, that Solomon Smith Barney was not an ERISA fiduciary, and that no special relationship existed between the parties which could support the common law torts.

Andersen v. Salomon Smith Barney, CV 03-505-KI (Opinion, August 31, 2005)
Plaintiff's Counsel: David Foster
Defense Counsel: Steven Blackhurst

Insurance Contract

Plaintiff brought a claim pursuant to the admiralty jurisdiction of the court as the action involved the interpretation of a marine insurance contract. After analyzing and interpreting the insurance policies at issue, Judge Aiken found an ambiguity as to which policy should govern the dispute. Therefore, the court relied on extrinsic evidence to determine which policy controlled.

Judge Aiken denied defendant's motion for summary judgment and granted defendant's alternative motion for partial summary judgment. The court denied plaintiff's cross-motion for summary judgment as to the construction of the insurance policy.

D.R. Johnson Lumber Co. v. Fireman's Fund Insurance Co., CV 03-1588-AA (Opinion, April 12, 2005)
Plaintiff's Counsel: Michael Haglund
Defense Counsel: Daniel Knox